UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

PACIFIC AEROSPACE & ELECTRONICS, INC., a Washington corporation, Plaintiff, v. EDWARD TAYLOR, an individual; KRISTEN TAYLOR, an individual; JAMES PETRI, an individual; RAAD TECHNOLOGIES, INC., a Washington corporation; Defendants.	No. CS-02-412-AAM **ORDER GRANTING MOTION FOR CONTEMPT**

Hearing was held on April 20, 2004 regarding plaintiff's Motion For Contempt (Ct. Rec. 192). Harry Korrell, Esq., and Douglas J. Morrill, Esq., appeared for plaintiff. Bryce J. Wilcox, Esq., appeared for defendants Edward Taylor and James Petri and for SRI Hermetics, Inc. Defendants Taylor and Petri testified, as did Rodney Arena and Darrell Anderson. Oral summations were presented by counsel on April 30.

I. BACKGROUND

On March 15, 2004, the court entered an "Order Granting

Plaintiff's Ex Parte Motion For A Temporary Restraining Order" (Ct. Rec. 186). The order authorized Blank & Associates, P.S. "as officers of the Court, to enter Defendants' business premises and inspect any files, equipment, computers, and computer systems." The inspection was to be conducted by Eric P. Blank who was to be accompanied by plaintiff's counsel. The court granted the order based on declarations of Rodney Arena and Darrell Anderson who had been principals along with defendants Taylor and Petri in defendant RAAD Technologies, Inc.. Arena and Anderson asserted Taylor and Petri, in various respects, had violated the Consent Decree entered by this court on November 24, 2003 (Ct. Rec. 171). The TRO was entered ex parte based on the court's finding that if Taylor and Petri had been given notice of the motion for TRO, it would have allowed them an opportunity, if they were so inclined, to secret or destroy evidence before there was an opportunity to conduct the inspection and ascertain/confirm violations of the Consent Decree. Blank attempted to perform the inspection of defendants' "business premises" on March 18, 2004, but defendants did not allow him to enter said premises.

On April 22, 2004, this court entered an order denying defendants' motion to amend/clarify the TRO and the motion of defendants' present employer, SRI Hermetics, Inc., for a protective order relating to the inspection (Ct. Rec. 242). Pursuant to the order, Mr. Blank was allowed to resume the inspection effort at 474 Highline, Suite B, East Wenatchee,

Washington, on a date and time of plaintiff's choosing. At the April 30 hearing, plaintiff's counsel advised that Blank still had not conducted the inspection. Because of the lapse of time and this disposition of the motion for contempt, plaintiff shall file a new application with the court seeking authorization for any renewed effort to conduct an inspection of defendants' business premises.

II. DISCUSSION

The object of punishment in a civil contempt proceeding is the enforcement of the rights and remedies of a litigant. Therefore, the relief granted is compensatory or conditional, often taking the form of a fine in the amount of damage sustained by the plaintiff and an award of costs and attorney fees. 11A Wright, Miller & Kane, Federal Practice and Procedure, §2960 at pp. 369-70 (2nd Ed. 1995). Plaintiff must establish one or more alleged civil contempts by clear and convincing evidence in order to justify imposition of sanctions. Whittaker Corp. v. Execuair Corp., 953 F.2d 510, 517 (9th Cir. 1992). While good faith is not a defense per se to civil contempt because disobedience of the court's order need not be willful, the Ninth Circuit has stated that a person should not be held in contempt if his action appears to be based on good faith and a reasonable interpretation of the court's order. Go-Video, Inc. v. Motion Picture Association of America, 10 F.3d 693, 695 (9th Cir. 1993) (aka In re Dual-Deck Video Cassette Recorder Antitrust Litigation).

Plaintiff seeks contempt sanctions for two distinct things: 1) defendants' refusal to comply with the March 15, 2004 ex parte TRO allowing inspection of defendants' "business premises" and 2) violation of the November 24, 2003 Consent Decree. The sanctions sought include: 1) that by virtue of defendants' refusal to allow the inspection on March 18, plaintiff be entitled to a conclusive presumption that defendants are in possession of confidential Pacific Aerospace and Electronics (PAE) information and property; 2) that plaintiff be awarded $250,000 in attorney's fees and costs for violation of the Consent Decree, as provided for in Paragraph 23 of the decree, as well as additional attorney's fees and costs incurred in bringing the ex parte motion, attempting to execute the same, and in bringing the motion for contempt; and 3) that defendants Taylor and Petri be enjoined from employment with, or work for, any entity in the hermetic connector industry for a period of two years.

A. Ex Parte TRO

Taylor and Petri did not comply with the TRO and therefore, the only issue is whether their failure to comply was based on good faith and a reasonable interpretation of the TRO. Many of the reasons the court gave in its April 22 order for denying SRI's motion for protective order and for denying defendants' motion to amend/clarify TRO refute the notion that defendants' refusal to comply with the TRO was in good faith and based on a reasonable interpretation thereof. Those reasons are

recounted here, but there are additional reasons for finding defendants' refusal to comply with the TRO warrants civil contempt sanctions.

Although the TRO did not specify the address of "Defendants' business premises," there was no dispute at the time the TRO was entered that Taylor and Petri were working for SRI and no reason to believe they could be found at any "business premises" other than the facility located at 474 Highline Drive, Suite B, East Wenatchee, Washington. The lease for these premises names Hermetic Design Concepts (HDC) as the lessee and is signed by defendant Taylor on behalf of HDC. (Ex. 1 to "Declaration of Douglas J. Morrill Regarding Exhibits To Plaintiff's Reply In Support Of Its Motion For Contempt," Ct. Rec. 240). Only Taylor and Petri were on these premises at the time Blank sought to conduct the inspection on March 18.

The court is not impressed by Defendants' attempt to hide behind SRI. The Consent Decree prohibits Taylor and Petri from using PAE information for their benefit or for the benefit of any other entity, such as SRI. Taylor and Petri work for SRI. An order which would have required only Taylor's and Petri's property be searched, and not the property of their employer SRI, would clearly have been inadequate because it would have allowed Taylor and Petri to conceal PAE information if they were so inclined. To the extent Taylor and Petri were legitimately concerned about SRI's confidential and proprietary information being compromised, they were required to yield such concern to

compliance with the TRO.

This is particularly so because of the protective provisions contained in the TRO. The TRO required Blank & Associates (B&A) to immediately place in sealed containers all the data collected during the inspection and hold it "until such time as arrangements [could] be made between Plaintiff and Defendants for B & A to inspect, search, and copy the contents." B & A was not to provide anything to plaintiff absent further court order, and counsel for the parties were not to have access to the data until 10 days after completion of the inspection. These provisions afforded SRI a reasonable opportunity to seek a protective order prior to Blank & Associates, plaintiff's counsel, or the plaintiff looking at any material obtained during an inspection.

Furthermore, while defendants claim they were concerned about losing their employment with SRI if the inspection had taken place and confidential SRI information somehow revealed to plaintiff, defendants had just as much reason to be concerned about losing their employment by not allowing the inspection. SRI was aware of the Consent Decree when it hired defendants. (Twombly Declaration at Ct. Rec. 204). Defendants' compliance with the Consent Decree was a condition of their employment with SRI. (Taylor Declaration at Ct. Rec. 216).

Taylor says that when Blank introduced himself to Taylor on March 18, 2004, "Taylor immediately recognized him as being the computer forensic attorney that offered testimony against Defendants earlier in this case." Even so, the court was not

presented with any evidence that Blank would have been unable to function as a neutral officer of the court as provided for in the TRO and as insured by the aforementioned protective provisions.

On March 18, Blank was accompanied by Douglas Morrill, one of the plaintiff's attorneys. This was specifically authorized by the TRO. Fed. R. Civ. P. 34(a) states a party may serve on any other party a request to permit entry upon designated land or other property in possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing or sampling the property or any designated object or operation thereon. There is no doubt defendants were in possession or control of the premises, even if the premises were being operated as an SRI facility and SRI was paying the rent. Allowing Morrill to accompany Blank was well within the court's authority. Moreover, Morrill was obligated not to disclose information to his client other than information belonging to his client.

The fact law enforcement authorities did not assist Blank in serving the TRO on defendants is inconsequential. The TRO provided that "any and all law enforcement agencies within the jurisdiction of this Court, specifically including the Wenatchee Police Department and any other police departments located in County of Chelan, Washington, shall accompany and assist B & A during Service and execution of this Order . . . ." The TRO did not require execution by law enforcement. It only directed law enforcement assistance if plaintiff decided such assistance was

necessary.

On March 18, Blank and Morrill attempted to arrange a telephone conference with the court for the purpose of having the court speak to defendants about complying with the order. Defendants were told by Blank and Morrill that they were trying to arrange such a call. The fact such a call did not take place does not justify defendants' failure to comply with the TRO. Defendants are college-educated gentleman who simply by reading the TRO could have easily understood its terms. There was no need for the court to verbally repeat to defendants what was already clearly directed in writing. And if defendants at all questioned the authenticity of the TRO, they needed do no more than call the District Executive to verify the same.

The purpose of the TRO "was to prevent the destruction or concealment of papers, documents, files, electronically stored information and equipment taken from or belonging to PAE in violation of the parties' Consent Decree." Defendants maintain neither of them have destroyed or concealed anything belonging to PAE. Defendants apparently want the court to accept them at their word. As discussed below, however, the defendants lack credibility. The very purpose of the TRO was to ascertain and/or confirm by surprise inspection whether defendants were concealing anything belonging to plaintiff. By not obeying the court's TRO on March 18, the defendants did not give plaintiff the opportunity the court had granted plaintiff. Defendants did not "substantially comply" with the TRO. They did not comply with it

at all.[1]

There is "clear and convincing" evidence that Taylor and Petri are in civil contempt for failure to comply with the TRO. Their failure to comply was not based on good faith and a reasonable interpretation of the TRO. Indeed, as discussed below, it is apparent their failure to comply with this order was simply the culmination of a pattern of their deciding for themselves which legal obligations they would comply with and to what extent. Based on this contempt alone, Taylor and Petri will be required to pay plaintiff its reasonable attorney's fees and costs incurred in bringing the ex parte TRO motion, attempting to execute the same, and in bringing the motion for contempt.

B. Consent Decree

Plaintiff alleges defendants violated the Consent Decree by: (1) keeping copies of confidential PAE documents that should have been turned over to plaintiff; (2) continuing to possess stolen PAE equipment and parts; (3) maintaining on their computers stolen PAE information about its manufacturing process and protocols; and (4) shipping parts to PAE customers.

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[1] Both Taylor and Petri were present on the morning the inspection was attempted. It appears Taylor spoke with Blank and took responsibility for defendants' response to the TRO. That does not, however, excuse Petri from responsibility. His attempt to bury his head in the sand by asserting in his declaration (Ct. Rec. 215) that he "was never asked permission to allow Mr. Blank or his associates access . . ., nor did [he] ever deny access to anyone" does not carry any weight with the court. Apparently, Petri did not even bother to read the court's order on the morning of March 18.

By virtue of defendants' failure to comply with the order allowing an inspection of their business premises, plaintiff asks the court for a conclusive presumption that defendants are in possession of confidential PAE information and property. While this may well be justified[2], the court need not rely on such a presumption to find that defendants have violated the Consent Decree.

In determining there have been violations of the Consent Decree, the court is forced to determine who is more credible: Arena and Anderson or defendants Taylor and Petri. Having had an opportunity to hear each of them testify and observe their demeanor, the court ultimately concludes Arena and Anderson are more credible. At the outset, some general observations are appropriate.

As noted above, Taylor and Petri have enjoyed the benefit of a college education. They are articulate and intelligent. They obviously possess a higher level of sophistication than Arena or Anderson, especially in the hermetic connector field. While Taylor and Petri attempted to paint Arena as the driving force at RAAD Technologies, it is apparent Taylor was calling most, if not all, of the shots. This is perhaps best evidenced by the fact

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[2] As plaintiff points out, Fed. R. Civ. P. 37(b)(2)(A) provides that an appropriate sanction for failure to obey an order to provide or permit discovery is entry of an order that "the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order." The TRO was essentially an order permitting discovery to ascertain/confirm Consent Decree violations claimed by the plaintiff.

that when RAAD Technologies was formed, the proposed distribution of shares in the company was such that Taylor would receive the vast majority of the shares, even if only in the form of options. (Ex. 5 to "Declaration of Douglas J. Morrill Regarding Exhibits To Plaintiff's Reply In Support Of Its Motion For Contempt," Ct. Rec. 240).[3] Furthermore, during their testimony, Arena and Anderson were willing to concede things they did not know or understand, whereas Taylor and Petri had a sure answer for everything. For example, Arena was willing to concede that a statement in his declaration that Taylor had actually "used" the card file in November 2003 was not accurate because he did not have such knowledge. Arena maintained, however, that Taylor did possess the card file.

The court is very cognizant of the fact that Arena's previous conduct on behalf of defendant RAAD Technologies was not in compliance with RAAD's discovery obligations, nor in compliance with the court's June 20, 2003 preliminary injunction (Ct. Rec. 86).[4] In its October 10, 2003 "Order Re Contempt," (Ct. Rec. 163), this court rejected Arena's interpretation of the preliminary injunction regarding RAAD's contact with PAE

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[3] At the April 20 hearing, Taylor admitted he had not turned this document over to PAE in the pre-Consent Decree litigation, claiming he did not think it had any relevance. This is another example, as discussed below, of the defendants deciding for themselves how they should interpret discovery requests and court orders.

[4] During his deposition, Arena admitted he offered untruthful testimony in depositions and declarations he had given prior to entry of the Consent Decree. (Arena Dep. at p. 183, Ex. 2 to Morrill Declaration at Ct. Rec. 240).

customers and found RAAD, as well as defendants Taylor and Petri, in contempt. Even so, the court is persuaded that since October 2003, Arena has made a sincere effort to "toe the line" drawn by the court and the Consent Decree, whereas for Taylor and Petri it has simply been more of the same in deciding for themselves what really is PAE's confidential and proprietary information and who really are PAE's customers.

It is true that since the dissolution of RAAD Technologies, Arena has developed a business relationship with PAE through RAAD Industries regarding certain aircraft work.[5] Thus far, Arena indicates he has done $3,000 of such work for PAE and acknowledged the potential for more. (Arena Dep. at pp. 50-56, Ex. 2 to Morrill Declaration at Ct. Rec. 240). It is also true, however, that RAAD Industries did machining work for PAE work long before the formation of RAAD Technologies by Arena, Anderson, Taylor and Petri. (Arena Dep. at p. 22).

Another thing which counters the notion that Arena would sell out Taylor and Petri for RAAD Industries' pecuniary gain is the fact that if Taylor and Petri violated the Consent Decree, so did RAAD Technologies because those violations occurred while Taylor and Petri were principals of RAAD Technologies. That means RAAD Technologies and its assets, whatever remain, are available to satisfy any judgment PAE obtains for violation of

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[5] RAAD Industries is an entity separate from RAAD Technologies. It existed before RAAD Technologies was formed and is in the business of the precision machining of parts.

the Consent Decree.[6] Arena and Anderson were also principals in RAAD Technologies and their interest in whatever remains in this entity is subject to being taken by PAE in satisfaction of a judgment for violation of the Consent Decree. Taylor and Petri state Arena and Anderson were dissatisfied with the financial affairs of RAAD Technologies, specifically concerning the respective liabilities of Taylor and Petri, and assert that is the real reason they accused Taylor and Petri of Consent Decree violations. In light of the potential liability of RAAD Technologies for such violations, however, the court does not believe Arena and Anderson concocted allegations of Consent Decree violations by Taylor and Petri because of their dissatisfaction with Taylor and Petri over the "money matters" of RAAD Technologies.[7] In the end, the court finds the Consent Decree violations by Taylor and Petri were likely just as significant a factor in the dissolution of RAAD Technologies as were the disagreements by the principals concerning finances of the company.

Arena and Anderson simply do not have as much to gain by falsely accusing Taylor and Petri of Consent Decree violations as

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[6] RAAD Technologies is a party to the Consent Decree and apparently both Arena and Anderson signed the precursor Settlement Agreement on behalf of RAAD Technologies. (Anderson Dep. at p. 80, Ex. 3 to Morrill Declaration; Arena Dep. at p. 79, Ex. 2 to Morrill Declaration). The court is not aware that the Settlement Agreement provides for any potential individual liability for Anderson or Arena for breach of its terms.

[7] Currently pending is a civil lawsuit by Arena and Anderson against Taylor and Petri relating to the dissolution of RAAD Technologies.

Taylor and Petri have to gain by lying about such violations. If violations are established, Taylor and Petri face potential loss of their employment with SRI, as well as individual liability for a substantial amount of attorney's fees and costs. And as plaintiff points out, a monetary judgment against Taylor and Petri in their individual capacities potentially lessens the pool of assets available to Arena and Anderson should they obtain a judgment against Taylor and Petri in the separate litigation concerning the dissolution of RAAD Technologies. In other words, Taylor and Petri have a significantly greater incentive to distort the truth.

Any discussion of the Consent Decree must recognize that it was developed by the parties. They fashioned it terms, consented to its conditions, and presented it to the court without reservation. The decree does not leave Taylor and Petri any room to decide what is PAE information and equipment which needs to be returned to PAE. Nor does it leave them any discretion with regard to who are PAE customers with whom they may not have contact. The decree states in clear and unambiguous terms that defendants are to deliver to their counsel "**any and all** information, documents of any kind . . . or record of information in **any** form taken from PAE or pertaining to PAE or its business with it customers as well as **any and all** copies of such materials . . . ." (Paragraph 22(d) of Consent Decree at p. 7)(Emphasis added). In clear and unambiguous terms, the decree enjoins defendants for a period of 18 months from soliciting or doing

business with PAE customers set forth on a list designated as Ex. A to the decree. (Paragraph 22(a) of Consent Decree at p. 6). Santa Barbara Focal Plane is on that list.

In its October 10, 2003 "Order Granting Motion For Partial Summary Judgment" (Ct. Rec. 164), this court modified its June 2003 preliminary injunction to prohibit defendants from soliciting, contacting, or conducting any further business with Santa Barbara Focal Plane (SBFP). Shortly after that, settlement negotiations ensued between the parties, resulting in a Settlement Agreement which was executed by PAE on November 10 (Declaration of Lew Wear at Ct. Rec. 179) and by the defendants on November 19 (Taylor Declaration at Ct. Rec. 216; Petri Declaration at Ct. Rec. 215). The Settlement Agreement, of course, called for entry of the aforementioned Consent Decree which was accomplished by this court on November 24. Despite the court's order, the Settlement Agreement, and then the Consent Decree, defendants went right ahead and conducted further business with SBFP on or about the date the decree was entered. Taylor and Petri do not dispute this, although they claim Anderson and Arena also agreed to it. Taylor and Petri knew it was improper to conduct business with SBFP and hence, a scheme was concocted to make it appear RAAD Technologies was not conducting business with SBFP. The parts were shipped by a third party, Process Logic, to Petri's home and then returned to Process Logic on November 25, 2003, identifying Petri as the sender and using SBFP's Federal Express account number. At the

April 20 hearing, Petri was asked why the parts were sent to his home. He responded he had no idea and furthermore, that he did not know how Process Logic obtained his home address. Petri's testimony defies belief. Both Taylor and Petri claim no money was received by them or RAAD Technologies for welding the parts for SBFP, but even if true (and the court has its doubts), this ignores the goodwill established with a forbidden customer. Defendants did business with SBFP in violation of the Consent Decree even if money did not change hands.

Arena says that while at RAAD Technologies, Taylor had PAE files in his possession. According to Arena, one of the files Taylor left behind following his departure from RAAD in December 2003 was the Ball Aerospace file. (Ex. 2 attached to Declaration of Rodney Arena at Ct. Rec. 196 and Praecipe at Ct. Rec. 212). The first page in the file contains the wording "PA&E-ID QUOTE REVIEW." Taylor does not dispute that this file, as well as similar files, were in his possession during his tenure at RAAD Technologies. During his testimony at the April 20 hearing, Taylor acknowledged he was sure PAE felt they owned the information contained in these files, but asserted the files were not associated with PAE's "document control system." According to Taylor, they were not sales files or quote files, but rather what he termed "customer information files." Taylor acknowledged he put these files together while he was employed at PAE and sometimes the information contained therein would later be transferred into a sales or quote file. Whatever Taylor chooses

to call these files, it is abundantly clear the information contained therein falls in the Consent Decree category of "**any and all** information, documents of any kind . . . or record of information in **any** form taken from PAE or pertaining to PAE or its business with it customers . . . ." (Emphasis added).

Taylor's lack of candor and forthrightness with regard to these "customer information files" is further revealed by certain testimony he gave at the April 20 hearing. Taylor was asked whether in a prior deposition he recalled testifying he had no additional PAE files. Taylor responded that the question he was asked was in regard to floppy disks he had in his possession and so he construed the question as whether he had any more electronic files in his possession. Taylor acknowledged that at the time he did have paper files, like the Ball Aerospace file, in his possession. He acknowledged those paper files were never turned over during discovery in the pre-Consent Decree litigation and he was "not sure" whether it was a lie when he and his counsel at the time represented they had no additional documents in response to plaintiff's discovery requests. According to Taylor, these files were not in his control for a "lengthy" period of time because they were in the garage of Arena's friend. (See Declaration of Jeff Strop at Ct. Rec. 239). Taylor testified he did not think he had access to these documents, but also conceded he did not try to get them. Considering Taylor's prominent role in RAAD Technologies, it is inconceivable that Taylor did not have access to the materials and could not have

obtained them if he really wanted to.

Likewise, it is inconceivable in a closely-held corporation with a limited number of shareholders that Taylor was not a fully knowledgeable and consenting party to the "bat cave" arrangement. Arena testified that Taylor and Petri referred to the home of Petri's in-laws as the "bat cave" and stored PAE information there after leaving their employment at PAE in August 2002. According to Arena, after Thanksgiving weekend 2002 and the commencement of this lawsuit, Taylor informed him Petri's in-laws were getting nervous about this arrangement and so Taylor asked if Arena knew of another place to store the material other than at RAAD Technologies. Arena testified he and Taylor transported the material to the garage of Arena's friend, Jeff Strop, and then, early in 2003, returned the material to RAAD Technologies. This deliberate concealment of information permeates the entire issue of credibility in this case.

Taylor claims he destroyed the paper "customer information" files sometime in the summer of 2003, but the existence of the Ball Aerospace file refutes that claim. Moreover, if he did destroy the files, that would be another example of Taylor's cavalier attitude that he was the one who should decide what to reveal and turn over to PAE, without input from PAE, the court, his own counsel, or anybody else.

Yet another example of this attitude is how Taylor dealt with the business card file he had developed while at PAE. He admits that in January 2003, before he turned the business card

file over to his counsel for discovery production, he made a copy of it and gave it to Arena for use at RAAD Technologies. Thereafter, he jotted down information on the file that would be useful for Arena in soliciting business for RAAD. Asked whether this contravened his obligation not to directly or indirectly solicit business for a PAE competitor, Taylor testified he could not say at the time if he had really answered in his own mind whether the business card file was public information.

Taylor, however, is not alone in this attitude. Mr. Petri's role in the SBFP transaction reveals he shared that attitude, as is his acknowledgement that during Thanksgiving Weekend of 2002, he discarded the hard drives on the computers at RAAD Technologies, making it impossible to ever know if PAE confidential and proprietary information was stored thereon.

Taylor's and Petri's conduct before the Settlement Agreement was signed and before the Consent Decree was entered is clearly relevant in assessing their credibility and determining whether they violated the decree. The court is entitled to look at Taylor's and Petri's entire course of conduct in this litigation, without being restricted to a narrow window of time commencing on the date of the entry of the Consent Decree (November 24, 2003).

Considering Taylor's and Petri's prior conduct in the litigation, the direct evidence of their Consent Decree violations by virtue of the SBFP transaction and retention of PAE "customer information" files, and their lack of credibility established thereby, the court has little difficulty in finding

there is compelling circumstantial evidence that after the Settlement Agreement was signed and the Consent Decree entered: 1) Taylor and/or Petri had PAE parts and manufacturing equipment in their possession which they brought with them to RAAD Technologies from PAE, including the Wedgetail housing[8], the sensitive scale, and the kilns[9]; 2) Taylor himself had a copy of the PAE business card file in his possession, in addition to the copy he claims he discovered in his litigation file after March 18, 2004; and 3) RAAD was using shop processes which Petri had developed from PAE confidential and proprietary information.[10]

There is "clear and convincing" evidence that defendants violated the Consent Decree and most, if not all, of the violations were willful. To the extent some violations may have

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[8] Both Arena and Anderson testified Taylor and Petri brought PAE parts with them because those parts were not at RAAD Industries before Taylor and Petri arrived and RAAD Technologies was formed. (Anderson Dep. at p. 40; Arena Dep. at p. 134).

[9] Taylor asserts the scale and the kilns were essentially junk discarded by PAE and PAE should have known he had the items. The court is not so persuaded and finds this is yet another example of Taylor deciding for himself what really belongs to PAE and what does not. There is no evidence that PAE explicitly or implicitly consented to Taylor having these items.

[10] Anderson's knowledge about this is based on certain inferences he made, however those inferences are reasonable in light of the corroborating declaration of Patrick Andrew Northwind who worked for RAAD Technologies from October 2002 to March 2003 and with PAE for seven years prior to that. Due to their lack of credibility, Taylor's and Petri's attempts to discredit Northwind, and Anderson for that matter, are not persuasive. Furthermore, the declaration of Stan McMillan does not assist defendants in attempting to discredit Northwind because McMillan does not say he was ever employed at RAAD Technologies. While he says he "spent time" at RAAD, he does not say how much time and when so as to allow him to assert PAE shop processes were not used by RAAD.

been merely "technical" or the product of "poor judgment," civil contempt sanctions are nonetheless warranted since "willfulness" is not required to impose such sanctions and the court finds no evidence of good faith by the defendants or that they reasonably interpreted the Consent Decree.[11]

For the violations of the Consent Decree, plaintiff asks to be awarded the $250,000 in attorney's fees and costs provided for in Paragraph 23 of the decree, the full text of which is set forth in footnote 11 supra. As an additional sanction, plaintiff

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[11] If there is "clear and convincing" evidence of Consent Decree violations, the lesser "preponderance of evidence" standard is also satisfied. Plaintiff has framed its motion as one for contempt, rather than one merely for enforcement of the decree based on breach thereof. It appears to the court that plaintiff did not need to pursue contempt as the remedy for breach of the decree. Paragraph 23 of the Consent Decree provides:

> PAE is entitled under RCW 19.108.040 to recover from defendants, inter alia, its reasonable attorneys' fees and costs incurred in this matter, which the parties agree amount to $250,000. No judgment will be entered for such fees and costs unless a defendant is found by the Court to have violated the terms of this order. In that event, **in addition to any other damages and contempt sanctions the Court deems appropriate**, Plaintiff will be permitted to apply to the Court for its costs and fees incurred in this action (including in the enforcement of this decree), and the Court will enter judgment in favor of PAE for $250,000 for its reasonable attorneys' fees and costs to date, plus any additional amounts incurred in the enforcement of this Decree.

(Emphasis added).

asks that Taylor and Petri be enjoined from employment with, or work for, any entity in the hermetic connector industry for a period of two years.

The reasonable attorney's fees and costs awarded to plaintiff for defendants' contempt of the TRO will undoubtedly be substantial. Adding $250,000 in fees and costs for violation of the Consent Decree gives the court some pause, especially if Taylor and Petri are barred from any involvement in the hermetic connector industry for a period of two years. Without knowing Taylor's and Petri's financial circumstances, or the financial circumstances of RAAD Technologies, it appears that if for a two year period Taylor and Petri could not do that for which they are trained, they would have a difficult time earning a living and having any reasonable chance of paying the fees and costs.

After giving the matter considerable thought, the court believes the better course is to award plaintiff $125,000 in attorney's fees and costs for violation of the Consent Decree, with the $125,000 balance available in the event of any further violations of the decree. Hopefully, after this most recent round of litigation, defendants will have adequate incentive for scrupulously complying with the decree from here on out, including compliance with those terms restricting what they can do in the hermetic connector industry. In the event of a further violation, plaintiff can seek the $125,000 balance from defendants without the need for and difficulty of proving actual damages. The court believes it has the discretion to award

relief in this fashion pursuant to the terms of the decree, as well as pursuant to its contempt authority which plaintiff has invoked.

III. CONCLUSION

Plaintiff's motion for contempt (Ct. Rec. 192) is **GRANTED**.

Defendants Taylor and Petri are in contempt for refusal to comply with the March 15, 2004 ex parte TRO. For that contempt, Taylor and Petri shall pay to plaintiff its reasonable attorney's fees and costs incurred in bringing its motion for ex parte TRO, attempting to execute the same, and in bringing its motion for contempt. Within ten (10) calendar days of the date of this order, plaintiff's counsel shall serve and file an affidavit of said fees and costs incurred. At its option, plaintiff may also serve and file a supporting memorandum. Within ten (10) calendar days thereafter, defendants may serve and file any objection to the requested fees and costs. Within five (5) calendar days thereafter, plaintiff may serve and file a reply to any objections registered by defendants. Thereafter, the court will determine the amount awarded and enter judgment against Taylor and Petri, making them jointly and severally liable for the award.

Defendants Taylor, Petri and RAAD Technologies, Inc., have violated the November 24, 2003 Consent Decree and are in contempt for those violations. For that contempt, Taylor, Petri and RAAD Technologies shall pay to plaintiff $125,000 in attorney's fees

and costs pursuant to RCW 19.108.040 as provided for in Paragraph 23 of the Consent Decree. Judgment shall be entered against Taylor, Petri and RAAD Technologies for this amount. They are jointly and severally liable for the same. The court retains continuing jurisdiction over enforcement of the decree and for any additional violations thereof, may award plaintiff the balance of the attorney's fees and costs ($125,000) provided for in Paragraph 23 of the Consent Decree, plus any other sanctions warranted.

IT IS SO ORDERED. The District Executive is directed to enter this order and forward copies to counsel.

DATED this 11th of May, 2004.

ALAN A. McDONALD
Senior United States District Judge